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McConnell

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-204810

DATE: November 4, 1981

MATTER OF: Hatch Construction & Paving

DIGEST:

1. Declaration of time for bid opening by bid opening officer is determinative of lateness absent independent evidence that bid opening occurred earlier or later than time designated in solicitation.
2. Where only evidence of time of bid submission is conflicting statements of the protester and the contracting agency, the protester fails to meet its burden of affirmatively proving its case.
3. Hand carried bid which is still in the possession of the bidder at the time of bid opening is late notwithstanding bidder's possible timely arrival in building specified in solicitation.

Hatch Construction & Paving (Hatch) protests the rejection of its bid as late by the Forest Service, Department of Agriculture, under solicitation No. R3-81-126.

We find no merit to the protest.

The solicitation designated April 7, 1981, at 2:30 p.m. as the date and time for bid opening, and the Forest Supervisor's Office, Apache-Sitgreaves National Forests, as the place of bid opening. Hatch's representative arrived at the reception area of the Forest Service building, (called the "Forest Supervisor's Office") at approximately 2:26 p.m. by the reception area clock.

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The receptionist directed the representative to proceed to the bid opening room. Hatch asserts that the representative arrived at the bid opening room before 2:30 p.m. while the bid opening officer was announcing that the time for bid opening had arrived. The Forest Service states that the bid opening officer had closed the bidding at 2:30 p.m. by his wristwatch and was in the process of opening bids when Hatch arrived.

The bid opening officer viewed Hatch's bid as late and refused to accept it. The contract was awarded to another bidder.

Hatch contends that arrival of its hand-carried bid at the reception area at or near 2:30 p.m. was delivery "in the office designated in the invitation for bids not later than the exact time set for opening of bids" as required by Federal Procurement Regulations § 1-2.302.

Thus, Hatch asks that we construe the words "office designated in the solicitation" to mean that Hatch needed only to deliver its hand-carried bid to the Forest Service building by 2:30 p.m. since the solicitation designated only the building and not a specific room.

We believe that the resolution of the matter is not dependent on the initial contact point, since Hatch's representative never relinquished possession of the bid to the receptionist. Rather, the question here is whether the clock which Hatch relies on to support its claim of a timely delivery was in fact the clock used to time the receipt of bids. See National Blower and Sheet Metal Company, Inc., B-194895, October 3, 1979, 79-2 CPD 240. Clearly it was not. The bid opening officer relied on his wristwatch, which the Forest Service asserts was shown to be accurate. According to the Forest Service, the reception area clock upon which Hatch relies was verified as being four minutes slow.

We have repeatedly held that the declaration of time of bid opening by the bid opening officer must serve as the criterion for determining lateness absent evidence that the time the declaration was made was incorrect. Eugene M. Keane, B-189184, August 8, 1977, 77-2 CPD 92. Since Hatch's argument that bid opening occurred prior to 2:30 p.m. is unsupported by evidence other than Hatch's own statement, we have no basis to conclude that the bid opening officer closed the bidding early. Since at the time bid opening occurred Hatch's

representative was still in possession of the bid,
it, therefore, was properly considered to be a
late bid when tendered.

The protest is denied.

Milton J. Arosen
for Comptroller General
of the United States